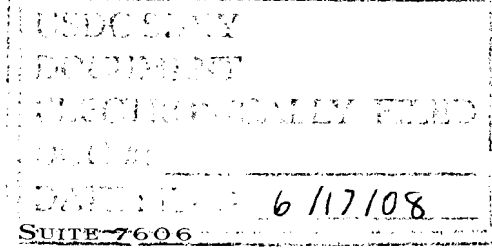


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JUN 17 2008

350 FIFTH AVENUE  
NEW YORK, N.Y. 10118-7606

June 10, 2009

Via post

MEMO ENDORSED

p2

The Honorable Richard M. Berman  
United States District Court  
500 Pearl Street  
New York, NY 10007

Re: **Richard Feiner and Co., Inc. v. The New York Times et. al.**  
**07 Civ. 11218(RMB)(RLE)**

Dear Judge Berman:

The undersigned is counsel to plaintiff Richard Feiner and Co., Inc. in the above referenced copyright infringement suit.

Defendant filed a motion to dismiss the plaintiff's complaint which plaintiff timely answered on May 28, 2008. In defendants' reply memorandum of law, dated June 9, 2008, new issues are being raised for the first time, namely, that the claims based on copyright are not "plausible", and that plaintiff lacks rights under copyright to the subject images because Hal Roach Studios did not own rights in the subject motion pictures from which these pictures were derived or that plaintiff lacks an "assignment from the photographers, let alone that it registered that assignment" (reply memo at p. 5), despite the fact that the photographers were employed by Hal Roach Studios rendering the rights in these photographs as works for hire under the 1909 Copyright Act. Defendants also refer to a quote from the plaintiff's book, *Laurel & Hardy*, "The photographs used are mostly studio publicity pictures, shot by a still photographer either just before or after the actual shooting of the movie scene depicted" (reply memo at n. 3). This quote is entirely outside of the pleadings, has no connection to the subject images of this suit, nor admits that these "studio publicity pictures" are protected under copyright.

The plaintiff has not invoked the doctrine of collateral estoppel against the defendants, as falsely claimed at p. 9 of their memorandum.

GREGORY A. SIORIS

The Honorable Richard M. Berman  
United States District Court  
June 9, 2008  
Page Two

Plaintiff objects to new issues being presented in a reply, and it kindly requests that the Court does not consider them, *Sigmon v. Parker Chapin Flattau & Kimpl*, 901 F.Supp. 667, 677 n.5, (S.D.N.Y. 1995) citing *United States v. Gigante*, 39 F.3d 42, 50 n.2 (2<sup>nd</sup> Cir. 1994) modified on other grounds, 94 F.3d 53 (2<sup>nd</sup> Cir. 1996) and *NLRB v. Star Color Plate Serv.*, 843 F.2d 1057, 1510 n.3 (2<sup>nd</sup> Cir. 1988), all as cited in *Sabre v. First Dominion Capital, LLC*, 2002 U.S. Lexis 22193 at \*9 (S.D.N.Y. 2002).

Alternatively, in the event that the Court wishes to consider these new issues, the plaintiff requests leave to file a sur-reply in order that they may be fully briefed.

I thank Your Honor for considering this request.

Very truly yours,

  
Gregory A. Sioris

<u>The Court has not yet</u>	
<u>reviewed the Briefs but PL</u>	
<u>may submit a short (5-7pp)</u>	
<u>"sur-reply," by 6/23/08 @ noon.</u>	
<hr/>	
<hr/>	
SO ORDERED:	<u>Richard M. Berman</u>
Date: <u>6/17/08</u>	Richard M. Berman, U.S.D.J.

GAS: ms

Cc: Nancy E. Wolff, Esq. (via fax)